



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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May 27, 2015

VIA INTERNET

Dear Interested Party:

The Audit Manual (AM) and Compliance Policy and Procedures Manual (CPPM) are guides for the Board of Equalization (BOE) staff in administering tax and fee programs. They are available to the public and can be accessed from the BOE web page at <http://www.boe.ca.gov/sutax/staxmanuals.htm>.

The Sales and Use Tax Department (SUTD) is proposing to revise AM Chapter 2, *Preparation of Field Audit Reports*, and CPPM Chapter 7, *Collections*. AM Chapter 2 is being revised to incorporate current audit policies and provide audit staff with the applicable CPPM sections that contain detailed descriptions of the various types of dual determinations. CPPM section 764.040, *Dual Determinations—Statutory Provisions*, is being revised based on the Legal Department's edits to the AM and thus, to maintain consistency between the two manuals.

The revision material is provided on the following pages for the convenience of interested parties who may wish to submit comments or suggestions. Please feel free to publish this information on your website or otherwise distribute it to your association/members.

If you have any comments or suggestions related to the proposed AM or CPPM revisions, you may contact the BOE at AM.RevisionSuggestions@boe.ca.gov. Your comments or suggestions must be received by BOE no later than **July 30, 2015**, in order to be considered by staff. Thank you for your consideration.

Sincerely,

Susanne Buehler, Chief
Tax Policy Division
Sales and Use Tax Department

FORM BOE-1296, ACCOUNT UPDATE INFORMATION

0201.20

Auditors must complete Form BOE-1296, *Account Update Information* (Exhibit 19), for each audit report including on Forms BOE-414-C, the *Report of Examination of Records* and Form BOE-414-B, *Field Billing Order*, with the exception of audits of Fortune 500 businesses (www.fortune.com). Auditors must complete Form BOE-1296 after reviewing the taxpayer's books and records. The form should be completed during the course of field work – before the exit conference with the taxpayer and/or representative. Form BOE-1296 should not be mailed or handed to the taxpayer for completion and information to complete the form should not be obtained from the BOE file or permit application. [Detailed completion of Form BOE-1296 can assist in determining a responsible person liability when needed.](#) As soon as Form BOE-1296 is completed, a copy of it, along with proof of tax reimbursement and any documents used to verify changes in corporate officer(s) or LLC member(s), should be routed to the District Principal Compliance Supervisor, via the auditor's supervisor.

SPECIAL INSTRUCTIONS AND INFORMATION

0204.12

Below are typical notations that appear on the bottom of page 1 of the system-generated report (Form BOE-414-E). ~~However, These~~ notations are entered on page 3 of Form BOE-414-A under “Special Instructions” (see AM section 0205.62 and Exhibit 1, page 3).

- (a) A list of related accounts audited or examined in conjunction with the current account (AM section 0205.46).
- (b) A notation that security is available, especially in bankruptcy audits (AM section 0203.15).
- (c) ~~In case of~~For closed-out partnership accounts, a statement indicating that there are general partners listed in the “General Audit Comments” of Form BOE-414-A (AM section 0202.50).
- (d) A special notation when separate determinations have been issued for expiring periods, such as phone billing and FBO (AM section 0215.30).
- (e) When a dual determination is involved, enter a notation regarding the type of dual determination (See AM section 0204.16), for example: ~~regarding the following:~~
 - Predecessor’s liability
 - Successor’s liability ~~or~~
 - Suspended Corporation Dual, etc.
 - ~~Collection thereof~~

.....

Dual determinations may be issued against a dualee for some or all of the unpaid liabilities of the primary taxpayer a corporation and its corporate officers, shareholders or other responsible persons or entities for any periods for which the statute of limitations have not expired under the law. ~~have not expired under the provisions of RTC section 6487 and similar sections for other tax laws.~~

When a waiver of the statute of limitations has been obtained from the primary taxpayer, ~~billings or liens result in an extension of the statute of limitations for a corporation,~~ the statute of limitations is not extended for issuing a dual determination against a dualee for the taxpayer's liability. ~~an officer or other person in control.~~ Accordingly, if permitted under the law, separate waivers of the statute of limitations ~~are can be~~ obtained from the dualees. ~~those individuals determined to be responsible for the tax liability in accordance with RTC section 6488.~~ If waivers cannot be obtained from the ~~dualees~~individuals, separate determinations can be issued for the expiring quarters against ~~those individuals~~the dualees.

~~Dual determinations may be issued as follows:~~ For detailed information on the various types of dual determinations, refer to the following sections in the Compliance Policy and Procedures Manual (CPPM), Chapter 7, Collections:

1. Predecessor Dual Determination ~~(Dual with the successor)~~ — CPPM section 734.012, Dual Determinations Against Predecessor – When Applicable.

~~When a predecessor fails to notify the Board that he or she discontinued, sold or transferred his or her business, the predecessor may be held liable for tax, interest and penalty (except for fraud or intent to evade) incurred by the successor/transferee, if the predecessor had actual or constructive knowledge that the successor/transferee was using his or her permit in any manner. The predecessor's liability, however, is limited to the quarter in which the business was transferred, and the three subsequent quarters. However, the limitation on liability does not apply in cases where, after the transfer, 80 percent or more of the real or ultimate ownership of the business is still owned or held by the predecessor. (See RTC section 6071.1, subsections (a) (b) and Regulation 1699 (f).)~~

1.2. Successor Liability ~~(Dual with the predecessor)~~ — CPPM section 732.000, Successor's Liability.

~~When a successor or a purchaser of a stock of goods fails to withhold a sufficient amount of the purchase price to cover the tax liability of the seller, the successor may be held liable for tax, interest and penalty. The liability of the successor or purchaser of a stock of goods extends to amounts incurred from the operation of the business by the predecessor or any former owner, including the sale thereof, even though not then determined against him or her. The successor's liability can include taxes, interest and penalties, including penalties for nonpayment of taxes, penalties determined and unpaid at the time of sale for negligence or intentional disregard of the law or authorized rules and regulations, and for fraud or intent to evade the law or authorized rules and regulations. However, the amount of the~~

~~successor's liability is limited to the purchase price of the business. The requirement that a successor or purchaser of a business or stock of goods withhold sufficient of the purchase price to cover the tax liability of the seller arises only in the case of the purchase and sale of a business or stock of goods under a contract and does not arise in connection with other transfers of a business, such as assignments for the benefit of creditors, foreclosures of mortgages, or sales by trustees in bankruptcy. (See RTC sections 6811–6814 and Regulation 1702.)~~

~~Partner (Dual with partnership) — General partners are jointly and severally liable for all the debts and obligations incurred by the partnership. (See California Corporations Code section 16306.)~~

~~2.3. Dissociated Partner (Dual with partnership) — CPPM section 724.020, Liability of Partners. When a partner withdraws or otherwise dissociates from the partnership during the audit period, the dissociated partner may continue to be liable for all or a portion of the taxes due. In cases where notification of the partner's dissociation is actually given to the Board (actual notice), the liability is limited to the time preceding the date actual notice was given. (See California Corporation Code section 16703(a).) In those cases where the partner fails to notify the Board of his or her dissociation from the partnership, the (Revised) Uniform Partnership Act (RUPA) provides that the dissociated partner's liability for the ongoing partnership debts extends for two years from the date of separation. (See California Corporations Code section 16702.) If the dissociating partner files a Statement of Dissociation with the Secretary of State, but fails to notify the Board, liability is limited to 90 days from the date the notice was filed with the Secretary of State. (See California Corporations Code section 16704.)~~

~~3.4. Responsible Person Liability (RTC section 6829 Dual) – CPPM section 764.080, Dual Determinations Under RTC section 6829 – Statutory Provisions through CPPM section 764.180, Disproving Personal Liability Prior to NOD.~~

RTC section 6829 and Regulation 1702.5 set forth the requirements for holding a responsible person personally liable for unpaid tax, interest, and penalties owed by a corporation, partnership, limited partnership, limited liability partnership or limited liability company (entity).

The Centralized Collection Section (CCS) is responsible for performing an investigation on accounts that are appropriate for the issuance of an RTC section 6829 dual. However, the best time to gather evidence to support potential personal liability under RTC section 6829 is while the entity's business is active (see CPPM section 726.015) or during an audit of the entity's records.

~~(Dual with corporation, partnership, limited liability partnership or limited liability company) — Any officer, member, manager, partner, or other person (responsible person) having control or supervision of, or who is charged with the responsibility for the filing of returns or the payment of tax, or who is under a duty to act for a corporation, partnership, limited liability partnership, or limited liability company (the business) in complying with any requirement of~~

~~the taxation laws, shall become personally liable for any unpaid taxes, interest and penalties that became due during the period that the responsible person had the control, supervision, responsibility or duty to act for the business if the responsible person willfully fails to pay or to cause to be paid any taxes due from the business upon termination, dissolution, or abandonment of the business. (See RTC section 6829 (a) (b) and Regulation 1702.5.)~~

~~4.5. Unincorporated Entity — CPPM section 726.020, *Requirements to Qualify as a Corporation*. If it is determined that a company which holds itself out as being incorporated is not incorporated, tax will apply against the company as if it was a sole proprietorship, partnership, joint venture or other entity.~~

~~5.6. Suspended Corporation Dual — CPPM section 764.060, *Dual Determination Against Corporate Officers Suspended Corporation*. e Officer, Shareholder, or Responsible Person (Dual with Corporation) — A corporate officer or shareholder with control over operations or management of a closely held corporation during a time in which the corporation's powers, rights, and privileges are suspended, or any responsible person who fails to pay or to cause to be paid any taxes due from a closely held corporation during a time in which the corporation's powers, rights, and privileges are suspended, shall be personally liable under the circumstances set forth in Regulation 1702.6 for taxes, interest and penalties.~~

~~6. Questionable Ownership Dual (Ownership of Business Unknown) — CPPM section 764.030, *Dual Determinations — General*. When it is impossible to determine the precise ownership of the business, determinations may be made against all possible or probable owners who may be liable for the tax. See AM section 0202.45 for procedures.~~

A permit number is required for all parties that are listed on a dual determination. Since a dual determination cannot be issued without a permit number, it is the auditor's responsibility to ensure permit numbers are obtained.

Add a notation indicating the type of dual determination on page 3 of Form BOE-414-A under the "Special Instructions" caption (AM 0204.12). See also AM section 0206.49 for information on what to include in the "General Audit Comments" embedded Word document on Form BOE-414-A, page 3, on regarding dual determinations.

DUAL DETERMINATION COMMENTS

0206.49

For information on types of Dual Determinations, see AM section 0204.16. AM section 0204.16 provides a listing of Dual Determination situations and specifies the applicable CPPM sections that describe the various dual determinations.

When making a Dual Determination (DUA) comment in the “General Audit Comments” of Form BOE-414-A, page 3, the auditor should include the following information for the identified dual determination:

~~When a predecessor fails to notify the Board that its business was discontinued, transferred, or sold, the predecessor may be held liable for tax, interest and penalty (except for fraud or intent to evade) incurred by the successor/transferee, if the predecessor had actual or constructive knowledge that the successor/transferee was using the predecessor’s permit in any way. This includes displaying the permit at the transferee’s place of business, issuing resale certificates using the permit number of the predecessor, or filing returns using the permit number and name of the predecessor or the predecessor’s business name. (See AM section 0204.16, subsection 1.)~~

~~Except in cases where, after the transfer, 80 percent or more of the real or ultimate ownership of the business is still owned or held by the predecessor, the liability is limited to the quarter when the business was transferred, and the three (3) subsequent quarters. (See Regulation 1699(f) and AM section 0204.16, subsection 1.)~~

~~General partners are jointly and severally liable for all the debts and obligations incurred by the partnership. However, to assert personal liability, a dual determination must be issued to each partner, including against a general partner that dissociated from the partnership without notifying the Board. In cases where the partner fails to notify the Board of his or her dissociation from the partnership, RUPA provides that the dissociated partner’s liability for the ongoing partnership debts extends for two years from the date of separation. If the dissociating partner filed a Statement of Dissociation with the Secretary of State, but failed to notify the Board, liability is limited to 90 days from the date the notice was filed. In those cases where notification of the partner’s dissociation is actually given to the Board (actual notice), the liability is limited to the time preceding the date actual notice was given. (See AM section 0204.16, subsection 4.)~~

~~Dual determinations are also applicable in cases where a successor or a purchaser of a stock of goods fails to withhold a sufficient amount of the purchase price to cover the tax liability of the seller. The liability of the successor or purchaser of a stock of goods extends to amounts incurred from the operation of the business by the predecessor or any former owner, even though not yet determined against the predecessor or any former owner. The successor’s liability can include amounts for tax, interest and penalties, including penalties for negligence, intentional disregard for the law or regulations, fraud or intent to evade the law or regulations determined against the predecessor and unpaid at the time of the business or stock of goods was sold. However, the amount of the successor’s liability is limited to the purchase price of the business (see RTC section 6812 and Regulation 1702).~~

~~In cases where the precise ownership of the business is unknown, see AM section 0202.45 for further information.~~

~~**Note,** where the dual determination period differs from the audit period, a separate tax, interest and penalty computation is required for the dual and the respective amounts included in the comments.~~

~~In cases of p1. Predecessor Liability, the auditor's comments should include the following:~~

- The reason for the dual determination.
- The name, address and permit number of the predecessor against whom the dual determination is to be issued.
- The period of the predecessor's liability.
- A discussion of the evidence showing that the predecessor discontinued, transferred or sold the business or stock of goods to the successor. If available, include a copy of the contract or other documentation of the transfer of the business in the audit.
- A discussion of the evidence showing that the predecessor had actual or constructive knowledge that the successor was using the predecessor's permit or permit number (include a copy if available).

~~In the case of s2. Successor's Liability:~~

- The reason for the dual determination.
- The name, address and permit number of the successor.
- The limit of the successor's liability (purchase price of the business or stock of goods).
- A description of the evidence that demonstrates the basis for the successor's liability. This includes how it was determined that the business or stock of goods was sold or transferred to the successor and how the purchase price was determined. If available, obtain a copy of the contract of sale.

~~In the case of a d3. Dissociated Partner, the auditor's comments should include:~~

- The reason for the dual determination.
- The name and address of the partner who withdrew or dissociated from the partnership. (Note: the Special Procedures Section will issue the arbitrary number to dual the dissociated partner.)
- The date the partner withdrew from the partnership. Examples of acceptable evidence supporting the date of withdrawal can include, but is not limited to, a Statement of Dissociation filed with the Secretary of State, an addendum to the partnership agreement signed by the partners, a signed affidavit from the partnership, a copy of a letter of withdrawal from the dissociating partner to the partnership, or a copy of a letter of withdrawal from the ongoing partnership to the dissociating partner. See also CPPM section 724.020 for types of evidence.
- The period of the dual determination.

4. Suspended eCorporation eDual requests, provide information showing that the corporation is a closely held corporation (see Regulation 1702.6).

In cases where the precise ownership of the business is unknown, see AM section 0202.45 for information on what to include in the dual determination comment.

Note: Where the dual determination period differs from the audit period, a separate tax, interest and penalty computation is required for the dual and the respective amounts included in the comments.

~~In the case of a successor's liability, the auditor should describe the evidence that demonstrates the transfer of the business or stock of goods and the basis of the successor's liability, including how the purchase price was determined.~~

Dual determinations may be issued against a dualee for some or all of the unpaid liabilities of the primary taxpayer for any periods for which the statute of limitations have not expired under the law. ~~that are not outlawed under the provisions of RTC section 6487 or similar sections of other tax laws.~~

When a waiver of the statute of limitations has been obtained from the primary taxpayer, ~~billing or lien results in an extension of the statute of limitations for a corporation,~~ the statute of limitations is not extended for issuing a dual determination against a dualee for the taxpayer's liability. ~~corporate officer or any other person in control of filing and paying the sales tax returns for the corporation.~~ Accordingly, if permitted under the law, separate waivers of the statute of limitations can be obtained from the dualees. ~~those individuals the BOE determines to be responsible for tax liability in accordance with RTC section 6488.~~ If waivers cannot be obtained from the ~~individuals~~dualees, separate determinations can be issued for the expiring quarters against ~~those individuals~~the dualees.